

Defending the U.S. Homeland

Strategic and Legal Issues for
DOD and the Armed Services

CSIS Homeland Defense Working Group

Author

Fred C. Iklé

January 1999



About CSIS

The Center for Strategic and International Studies (CSIS), established in 1962, is a private, tax-exempt institution focusing on international public policy issues. Its research is nonpartisan and nonproprietary.

CSIS is dedicated to policy impact. It seeks to inform and shape selected policy decisions in government and the private sector to meet the increasingly complex and difficult global challenges that leaders will confront in the next century. It achieves this mission in three ways: by generating strategic analysis that is anticipatory and interdisciplinary; by convening policymakers and other influential parties to assess key issues; and by building structures for policy action.

CSIS does not take specific public policy positions. Accordingly, all views, positions, and conclusions expressed in this publication should be understood to be solely those of the author.

President: Robert B. Zoellick

Executive Vice President & Chief Operating Officer: Anthony A. Smith

Executive Vice President: Douglas M. Johnston Jr.

Managing Director for Domestic & International Issues: Richard Fairbanks

Senior Vice President: William J. Taylor Jr.

Senior Vice President & Director of Studies: Erik R. Peterson

Director of Publications: James R. Dunton

Library of Congress Cataloging-in-Publication Data

CIP information available upon request

©1999 by the Center for Strategic and International Studies

All Rights Reserved

ISBN: 0-89206-348-3

The CSIS Press

Center for Strategic and International Studies

1800 K Street, NW

Washington, DC 20006

Telephone: (202) 887-0200

Fax: (202) 775-3199

E-mail: books@csis.org

Web: <http://www.csis.org>

Contents

Acknowledgments	vi
Working Group Members	vii
Summary and Recommendations	1
New Vulnerability to Mass Destruction Weapons	4
The Need for a Defensive Strategy	6
Contingencies That Call for a Leading DOD Role	9
Long-Term R&D Needs	11
Importance of a Surge Capability	12
Research Center for Biotechnology and Chemical Defense	14
Legal Authority for a Leading DOD Role	16
Notes	19
References and Related Studies	20
Threat Assessments	20
Operational Reports	21
About the Author	24

Acknowledgments

CSIS expresses its appreciation for the generous support by the W. Alton Jones Foundation and the law firms of Dechert Price & Rhoads and Thacher Proffitt & Wood.

Working Group Members

Project Director

Fred C. Iklé

Working Group

Kara L. Bue

Frank J. Cilluffo

Joshua Lederberg

I. Lewis Libby

Philip Merrill

Gen. Edward C. Meyer, USA (Ret.)

David H. Stephens

Michelle Van Cleave

Richard Wagner

Dov Zakheim

With assistance by

Joseph Cyrulik

Christopher Lennon

Alistair Shepherd

Lesley Young

Summary and Recommendations

...we have got to do everything we can to make sure that we close the gap between offense and defense to nothing, if possible.

—President Bill Clinton
January 22, 1999

- Because of the continuing global spread of technology, future enemies of the United States will be able to acquire advanced chemical and biological weapons and even first-generation nuclear weapons. Because the U.S. nuclear deterrent has not been designed against these diverse new threats and, indeed, might not be effective in preventing a catastrophic attack, a fundamental shift in U.S. strategy has become necessary: It will have to be a priority mission of the Department of Defense (DOD) to develop, deploy, and operate a wide range of *defensive* measures for the protection of the U.S. homeland.
- Today DOD is not prepared for this mission. It is as if its planning and preparations for armed conflict implicitly assume that U.S. territory would remain a sanctuary. Sometimes it is assumed the enemy would not be capable of using mass destruction weapons within the United States, an assumption contradicted by any realistic analysis. At other times it is assumed the enemy would not dare employ some weapons of mass destruction (WMD) within the U.S. homeland for fear of U.S. nuclear retaliation. Such reliance on nuclear deterrence is not warranted because the enemy would likely use clandestine forms of delivering the weapon and might expect its involvement would remain too ambiguous for nuclear retaliation. Or, to deter retaliation, the enemy might threaten to use additional weapons already emplaced.
- It is important to distinguish attacks on the U.S. homeland by isolated terrorists, on the one hand, and attacks by an enemy in time of war, on the other.
 - The U.S. government is now addressing the possibility that terrorists might use a mass destruction weapon within the United States. It is recognized that terrorist groups might someday acquire highly potent biological or chemical devices (or get hold of a nuclear weapon) for use in a U.S. city. To cope with this danger, the president has designated the Department of Justice and the

Federal Emergency Management Agency the lead agencies, Congress has granted the Federal Bureau of Investigation substantial increases in funding, and the DOD has started to provide training to the National Guard to assist local authorities in remedial measures after an attack has occurred.

- A different approach will be needed if mass destruction weapons are used against the U.S. homeland as part of the enemy strategy in warlike situations, not merely as an isolated terrorist act. Illustrative of such a contingency would be another Gulf war, in which the United States would confront a shifting coalition of hostile countries in the region, all of which might possess WMD of some sort. The United States, while preparing for such a war or already engaged in it, might have credible yet ambiguous information that a member of the enemy coalition has managed to smuggle a few mass destruction weapons into the United States. Or, conversely, as the United States is about to win this war, a biological or nuclear attack might actually occur in a U.S. city. Clearly, if the U.S. homeland is in danger of such attacks in war-time, the Defense Department—not the Justice Department—will have to be prepared to take the lead. Only the armed services would have the managerial and logistical capabilities to mount the all-out defensive effort required. For such a contingency—an attack worse than Pearl Harbor—the American people would expect and, indeed, demand that they could count on DOD and the armed forces to protect their homeland.

Clarify Legal Authority for DOD

- Questions have been raised about the legal authority for U.S. military operations within U.S. territory in defense of the U.S. homeland. The insufficiently understood or perhaps inadequate legal authorities for a military role in defending the U.S. homeland against WMD pose a significant national security risk. A clarification of existing authorities and, if necessary, additional legislation can overcome this deficiency. CSIS will publish a follow-on study on the scope and limitations of relevant legal authority; however, what DOD now mainly lacks for the defense of the U.S. homeland is not the legal authority but the necessary equipment and training.

R&D for Surge Capability

- The instruments, systems, and operational procedures for detecting, interdicting, or rendering harmless any clandestinely introduced mass destruction weapons have either not yet been developed or have not yet been acquired in sufficient quantities. This need not be a permanent condition. A long-term research and development (R&D) effort concentrating on such instruments and equipment holds great promise, as shown by several research projects that have been undertaken by DOD contractors and the national nuclear laboratories. These programs

should be greatly expanded to develop prototypes of equipment for countering chemical and biological attacks against the U.S. homeland and for detecting nuclear weapons that might be smuggled into the United States. Even though the best defenses could not guarantee the interdiction or disabling of every weapon, without greatly enhanced U.S. defenses any rogue country could readily acquire the means to blackmail or paralyze the United States.

- The primary purpose of this R&D effort should be to give the United States a mobilization capability to respond rapidly to a sudden increase in the threat. Before the threat is seen as truly imminent, it might not be prudent to procure the defensive systems in full quantities because of the risk of obsolescence and, in any event, the political and budgetary backing for such an undertaking might not be available.

Research Center for Biotechnology Defense

- A long-term R&D effort to provide better defenses against biological weapons is of particularly high priority. Within 10 to 20 years, the danger of biological attacks will become increasingly difficult to cope with because
 1. the technology for making new types of biological agents is bound to proliferate, given the expanding (and legitimate) pharmaceutical and agricultural applications;
 2. dictatorships will find it easy to exploit this legitimate technology while they prevent international verification schemes (even with the best possible treaty controls) from turning up evidence that would be compelling enough to justify effective sanctions; and
 3. biological agents can easily be smuggled across international borders.

An effective way to ensure long-term funding and to impart a practical focus to this effort would be to establish a biotechnology and chemical defense center. This center could be colocated with an appropriate existing facility. For the emerging age of biotechnology, such a center should play a role comparable with that of the U.S. nuclear laboratories at the beginning of the nuclear age. The basic difference would be the shift to a defensive strategy.